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March 23, 2007

DEPARTMENT OF ENERGY  
OFFICE OF HEARINGS AND APPEALS

Hearing Officer's Decision

Name of Case: Personnel Security Hearing

Date of Filing: April 11, 2006

Case Number: TSO-0375

This Decision concerns the eligibility of XXXXXXXXXXXX. (hereinafter referred to as "the individual") to hold an access authorization 1/ under the regulations set forth at 10 C.F.R. Part 710, entitled "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material." As set forth below, it is my decision, based on the evidence and testimony presented in this proceeding, that the individual's access authorization should not be restored.

**I. Background**

The individual is employed at a Department of Energy (DOE) facility where his work requires him to have an access authorization. During a background investigation, the local DOE security office discovered some derogatory information that created a security concern. DOE asked the individual to participate in a Personnel Security Interview (PSI) in order to resolve the information. The PSI did not resolve the security concerns. Consequently, in February 2006, DOE suspended the individual's access authorization.

The local DOE security office issued a Notification Letter to the individual on February 10, 2006. The Notification Letter alleges under 10 C.F.R. § 710.8(f) that the individual has "deliberately misrepresented, falsified, or omitted significant information from a Personnel Security Questionnaire or a Questionnaire for Sensitive Positions, Personnel Qualifications Statement, a Personnel Security Interview, written or oral statements made in response to an official inquiry on a matter that is relevant to a determination regarding eligibility for DOE access authorization. . . ." 10 C.F.R. § 710.8, subsection (f) (hereinafter referred to as Criterion F). In the Notification Letter, DOE also explained that the individual's illegal use of drugs while holding a DOE access authorization raised

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1/ Access authorization is defined as an administrative determination that an individual is eligible for access to classified matter or is eligible for access to, or control over, special nuclear material. 10 C.F.R. § 710.5(a).

concerns under the security regulations codified at 10 C.F.R. § 710.8, subsection (k) (hereinafter referred to as Criterion K). <sup>2/</sup>

Because of these security concerns, the case was referred for administrative review. The individual filed a request for a hearing on the concerns raised in the Notification Letter. DOE transmitted the individual's hearing request to the Office of Hearings and Appeals (OHA), and the OHA Director appointed me as the Hearing Officer in this case.

At the hearing, the individual testified on his own behalf and elected to call five witnesses. The agency did not call any witnesses. The transcript taken at the hearing shall be hereinafter cited as "Tr." Documents that were submitted by the DOE counsel during this proceeding constitute exhibits to the hearing transcript and shall be cited as "Ex."

## **II. Standard of Review**

The Hearing Officer's role in this proceeding is to evaluate the evidence presented by the agency and the individual, and to render a decision based on that evidence. *See* 10 C.F.R. § 710.27(a). 10 C.F.R. Part 710 generally provides that "[t]he decision as to access authorization is a comprehensive, common-sense judgment, made after consideration of all relevant information, favorable and unfavorable, as to whether the granting or continuation of access authorization will not endanger the common defense and security and is clearly consistent with the national interest. Any doubt as to the individual's access authorization eligibility shall be resolved in favor of national security." 10 C.F.R. § 710.7(a). I have considered the following factors in rendering this decision: the nature, extent, and seriousness of the conduct; the circumstances surrounding the conduct; the individual's age and maturity at the time of the conduct; the voluntariness of the individual's participation; the absence or presence of rehabilitation or reformation and other pertinent behavioral changes; the motivation for the conduct, the potential for pressure, coercion, exploitation, or duress; the likelihood of continuation or recurrence; and other relevant and material factors. *See* 10 C.F.R. §§ 710.7(c), 710.27(a). The discussion below reflects my application of these factors to the testimony and exhibits presented by both sides in this case.

When reliable information reasonably tends to establish the validity and significance of substantially derogatory information or facts about an individual, a question is created as to the individual's eligibility for an access authorization. 10 C.F.R. § 710.9(a). The individual must then resolve that question by convincing the DOE that restoring his access authorization "would not endanger the common defense and security and would be clearly consistent with the national interest." 10 C.F.R. § 710.27(d). In the present case, the individual has not convinced me that restoring his security

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<sup>2/</sup> Criterion K concerns information that a person has "[t]rafficked in, sold, transferred, possessed, used or experimented with a drug or other substance listed in the Schedule of Controlled Substances established pursuant to section 202 of the Controlled Substances Act of 1970 (such as marijuana, cocaine, amphetamines, barbiturates, narcotics, etc.) except as prescribed or administered by a physician licensed to dispense drugs in the practice of medicine, or as otherwise authorized by Federal law." 10 C.F.R. § 710.8(k).

clearance would not endanger the common defense and would clearly be in the national interest. The specific findings that I make in support of this determination are discussed below.

### **III. Findings of Fact**

On April 30, 2003, the individual signed and dated a Questionnaire for National Security Positions (QNSP) certifying that he had not illegally used any controlled substance in the last seven years. DOE Ex. 3. The DOE granted the individual an “L” access authorization based on the assumption that the individual had provided truthful answers on his QNSP. However, on April 13, 2005, the individual signed and dated another QNSP certifying that he had used marijuana “an unrecalled number of times and mushrooms four times from October 2000 to February 2002.” *Id.*

The individual’s use of illegal drugs and his falsification on a QNSP prompted DOE to conduct a PSI on December 13, 2005. During the PSI, the individual admitted that he consciously and deliberately misled the DOE in 2003 by answering “no” to illegal drug use on his QNSP. The individual stated that he answered “no” because “he was ashamed and scared of the negative consequences that an affirmative answer may have on his security clearance.” *Id.* The individual also acknowledged in the PSI that he had told the OPM investigator that he deliberately did not list that he had used any kind of illegal drugs on his 2003 QNSP.

With respect to the individual’s drug use from October 2000 to February 2002, the individual states that he used marijuana about twice a month for a total of 32 times during this time period, usually at college parties but occasionally in the backyard of his parents’ house. The individual states that he experimented with mushrooms on four occasions, eating a quarter of a cap or part of the stem of a mushroom. The individual further states that he has contributed money to purchase marijuana (\$5 to \$10 dollars at a time). He also states that he used drugs “out of curiosity, social pressure and escape” from family problems which included the separation of his parents, the pregnancy of his 15 year-old sister and the deaths of several family members.

According to the individual, he states that he last used illegal drugs in February 2002. He states that “God changed his heart” in February 2002 and he reformed by discontinuing all illegal drug use. He indicates that he has no intention of using illegal drugs in the future.

### **IV. Analysis**

#### **A. Security Concerns Cited Under 10 C.F.R. § 710.8(f) and (k)**

False statements or misrepresentations by an individual in the course of an official inquiry regarding a determination of eligibility for DOE access authorization raise serious issues of honesty, reliability, and trustworthiness. The DOE security program is based on trust, and when an access authorization holder breaches that trust, it is difficult to determine to what extent the individual can be trusted again in the future. *See, e.g., Personnel Security Hearing* (Case No. VSO-0013), 25 DOE ¶ 82,752 at 85,515 (1995) (*affirmed* by OSA, 1995); *Personnel Security Hearing* (Case No. VSO-0281), 27 DOE ¶ 82,821 at 85,915 (1999), *aff’d*, *Personnel Security Review* (Case No. VSA-0281), 27 DOE

¶ 83,030 (2000) (terminated by OSA, 2000). This security concern applies, however, only to misstatements that are “deliberate” and involve “significant” information. 10 C.F.R. § 710.8(f) (Criterion F). Based on the record before me, I find that the individual deliberately misrepresented significant information on his QNSP. Consequently, DOE properly invoked Criterion F in this case.

A finding of derogatory information does not, however, end the evaluation of evidence concerning the individual’s eligibility for access authorization. *See Personnel Security Hearing* (Case No. VSO-0244), 27 DOE ¶ 82,797 (1999) (affirmed by OSA, 1999); *Personnel Security Hearing* (Case No. VSO-0154), 26 DOE ¶ 82,794 (1997), *aff’d*, *Personnel Security Review* (Case No. VSA-0154), 27 DOE ¶ 83,008 (1998) (affirmed by OSA, 1998). Cases involving verified falsifications or misrepresentations are nonetheless difficult to resolve because there are neither experts to opine about what constitutes rehabilitation from lying nor security programs to achieve rehabilitation. Therefore, Hearing Officers must look at the statements of an individual, the facts surrounding the misrepresentation or false statement and the individual’s subsequent history in order to assess whether the individual has rehabilitated himself from the falsehood and whether restoring the security clearance would pose a threat to national security. *See Personnel Security Hearing* (Case No. VSO-0327), 27 DOE ¶ 82,844 (2000), *aff’d*, *Personnel Security Review* (Case No. VSA-0327), 28 DOE ¶ 83,005 (2000) (affirmed by OSA, 2000); *Personnel Security Hearing* (Case No. VSO-0418), 28 DOE ¶ 82,795 (2001). In the end, as a Hearing Officer, I must exercise my common sense judgment whether the individual’s access authorization should be restored after considering the applicable factors prescribed in 10 C.F.R. § 710.7(c).

The Criterion K security concerns at issue here are predicated on statements made by the individual during a PSI conducted by the DOE in December 2005. Specifically, the individual told the Personnel Security Specialist that he used marijuana from October 2000 to February 2002 twice a month for a total of 32 times during this time period. As a general matter, use of an illegal drug by an individual holding a security clearance is a source of serious concern since the ability to safeguard national security information is diminished when judgement and reliability is impaired, and individuals who use illegal drugs may be susceptible to being coerced or exploited to reveal classified matters. In addition, the use of illegal drugs raises questions about an individual’s ability or willingness to comply with laws, rules and regulations. These concerns are indeed important and have been recognized by a number of Hearing Officers in similar cases. *See, e.g., Personnel Security Hearing* (Case No. VSO-0221), 27 DOE ¶ 82,792 at 85,762 (1999); *Personnel Security Hearing* (Case No. VSO-0200), 27 DOE ¶ 82,770 at 85,628 (1998).

## **B. Mitigation of Criteria F and K Concerns**

The key issue in this case is whether the individual has brought forward sufficient evidence to demonstrate that he can now be trusted to be consistently honest and truthful with the DOE. In considering this question, I found that the nature of the individual’s misrepresentations was serious. The individual’s lack of candor concerning an area in his life that could increase his vulnerability to coercion or blackmail raises important security concerns. The DOE must rely on individuals who are granted access authorization to be honest and truthful; this important principle underlies the criterion set forth in 10 C.F.R. § 710.8(f). This principle has been consistently recognized by DOE

Hearing Officers. *See, e.g., Personnel Security Hearing* (Case No. VSO-0281), 27 DOE ¶ 82,821 at 85,915 (1999).

During the hearing, the individual explained his falsification on his April 30, 2003 QNSP. He testified that about two years later when he received the paperwork to complete his April 13, 2005 QNSP, “it had come to the forefront of his mind” that he had omitted some critical information from his 2003 QNSP. Tr. at 127. At this time, the individual testified that he wanted to come in to the security office and talk to someone about his omission. The individual further testified that he immediately sent an e-mail to a contact at DOE. *Id.* at 128. He stated that he later had a conversation with a contact at DOE and asked whether he should come in to resolve his issues. He was told that he should accurately complete the new QNSP and that he would be contacted about his omission.

During the course of the hearing, the individual explained that his falsification was an isolated incident that was not in line with his character. Tr. at 9. He testified that he now fully understands “the significance of national security and the national security process, and that my intentions behind full disclosure of my past drug use were setting the record straight and making things right, which reflect my true character of being honest and upright.” *Id.* He explained that he fully recognized the consequences of disclosing his falsification, but he nevertheless wanted to correct his record. The individual testified that he was 21 years old at the time of the omission and that he has matured greatly since then. According to the individual, “I had a very limited understanding of what it was to have a job . . . I helped my parents out in their restaurant for the longest time and I had student jobs, but that was the first time I really had . . . a serious job, and a lot of maturity comes with just understanding what you’re doing now . . . it’s not a game, especially with national security.” Tr. at 143. The individual testified that he has learned a lot in the last two years and has become more involved in the church. *Id.* at 144. He testified that he now fully understands what it means to be completely truthful with the DOE when completing security paperwork. Tr. at 164. He reiterated that he is very remorseful for the omission he made in his 2003 QNSP and believes that his life has changed in a positive manner in the last two years as evidenced by his commitment and involvement in the church.

During the hearing, several witnesses testified on behalf of the individual. The individual’s pastor, who has known the individual for four years, described the individual as a man of integrity. Tr. at 99. He testified that the individual works with the youth (specifically at a youth detention center) and other ministries in the church. The individual’s pastor further testified that the individual has an excellent reputation around the church community, stating that he is “a man of God that always represents himself properly.” *Id.* at 100. According to the individual’s pastor, the individual’s activities in the church show that he “really desires to do the right thing.” *Id.* at 103. He believes the individual has made a positive lifetime change in the last two years and has observed a rapid maturity in the individual. The individual’s pastor believes the individual fully comprehends the severity of his falsification and believes that the individual “has learned the value of telling the truth.” *Id.* at 109. He further testified that he did not believe the individual was susceptible to blackmail or coercion because the individual “owned up” to what he did. *Id.* at 110.

The individual's other witnesses included a supervisor, a co-worker and two of the individual's friends. The individual's supervisor has worked with the individual for two years. She described the individual as an honest, capable and dependable person who has a good reputation at work. Tr. at 13. The supervisor testified that the individual has matured a great deal in the last couple of years, which she attributes to the individual's life, school experiences and strong religious background *Id.* at 14. According to the supervisor, "I don't think [the individual] had a real good sense of the importance or how critical it was that [he] respond to everything in a mature manner at that point. I think it evolved, because I don't think [the individual] was very familiar with that working environment or the government environment." *Id.* at 14. She believes the individual now understands "the importance of being totally forthright with all of his responses." *Id.* at 16. The individual's supervisor reiterated that the individual was a student at the time of his falsification. Since then, the supervisor testified that the individual started to take his career very seriously, "he worked through and he got his master's degree, and that requires a level of maturity right there to work and get your master's degree at the same time and do extraordinary well." *Id.* at 26. The supervisor described the individual as "extraordinarily honest" and had no reason to believe that he would be susceptible to blackmail. *Id.* at 15. Similarly, the individual's co-worker and friends testified to the individual's honesty and good character. They also testified about the changes the individual has made in his life due to his religious convictions and his involvement with various church ministries. Tr. at 2-3. These witnesses further testified about the individual's openness regarding his past and believe he will not falsify information in the future. *Id.* at 79, 85.

In a number of decisions, DOE hearing officers have considered the implications of falsifications. The factors considered in these cases include the following: whether the individual came forward voluntarily to admit his falsifications, *compare Personnel Security Hearing* (Case No. VSO-0037), 25 DOE ¶ 82,778 (1995), *affirmed* (OSA, 1996) (voluntary disclosure by the individual), *with Personnel Security Hearing* (Case No. VSO-0327), 28 DOE ¶ 83,005 (2000), *affirmed* (OSA, 2000) (falsification discovered by DOE security); the length of time the falsehood was maintained; whether a pattern of falsification is evident; and the amount of time that has transpired since the individual's admission. *See Personnel Security Hearing* (Case No. VSO-0327) (2000), *affirmed* (OSA, 2000) (less than a year of truthfulness insufficient to overcome long history of falsification). *See also Personnel Security Hearing* (Case No. VSO-0289), 27 DOE ¶ 82,823 (1999) (19 months since last falsification not sufficient evidence of reformation from falsifying by denying drug use); *Personnel Security Hearing* (Case No. VSO-0319), 27 DOE ¶ 82,851 (2000), *affirmed* (OSA, 2000).

After considering all the evidence before me, I believe the individual has failed to mitigate the security concerns arising from his omission about his drug use. Although the individual appeared to be very remorseful for his falsification and now understands the importance of being totally forthright in his responses, I find his explanation for his omission to be unpersuasive. First, the individual's willingness to conceal information from the DOE in order to avoid adverse consequences is an action that is simply unacceptable among access authorization holders. *See Personnel Security Hearing* (Case No. VSO-0013), 25 DOE ¶ 82,752 (1995), *affirmed* (OSA, 1995). In addition, I am not convinced that the individual came forward to report his omission completely on his own volition. In 2005, the individual was required to complete a new QNSP and had to make a choice whether or not to perpetuate the falsehood. If the individual had not been required to

complete a new QNSP at that time, there is no indication in the record that the individual would have come forward voluntarily. Second, the individual maintained his falsification for about two years while his period of honesty is of a significantly shorter duration (14 months, ten months short of two years). Fourteen months is simply not sufficient to mitigate a two year period of falsehood. Other factors that do not augur in the individual's favor are the following: (1) the individual's falsification is fairly recent; (2) although the individual asserts that he did not fully comprehend the seriousness of withholding information on his 2003 QNSP, he acknowledged during the 2005 PSI that he intentionally did not disclose his drug use because he knew it would jeopardize his chances to obtain a clearance; (3) during the two-year period that the individual maintained the falsehood, the individual was vulnerable to blackmail, pressure or coercion; and (4) at the time of his falsification in 2003, the individual was an adult, albeit a young adult. For all the foregoing reasons, I find that the individual has failed to mitigate the security concerns raised by Criterion F.

As stated earlier, with respect to Criterion K, the use of illegal drugs, and the disregard for law and authority that such use suggests, indicate a serious lapse in judgment and reliability. However, for the reasons set forth below, I believe that the individual has mitigated the concerns regarding Criterion K. He has demonstrated his intent not to abuse any drugs in the future. *See Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* (December 29, 2005 Memorandum for William Leonard, Director, Information Security Oversight Office). During the hearing, the individual testified that he had not used marijuana or any other illegal drugs in four years, since February 2002. As stated earlier, the individual testified that he had made drastic changes in his life since his drug use. He is very involved in the work of his church and no longer associates with individuals who are involved with illegal drugs. I am convinced that the individual has not used illegal drugs for over four years prior to the hearing date. This behavior does not cast doubt on the individual's current reliability, trustworthiness or good judgement. *Id.* Furthermore, the individual has provided credible assurances that he will not use drugs in the future. In the end, the individual has provided compelling testimonial evidence that lead me to conclude that his past use of illegal drugs is unlikely to recur. Accordingly, after carefully weighing all the evidence, both favorable and unfavorable, I find that the individual has provided sufficient compelling evidence to mitigate the Criterion K concerns at issue.

#### **IV. Conclusion**

As explained in this Decision, I find that the DOE properly invoked 10 C.F.R. § 710.8(f) and (k). I find that the individual has resolved the security concerns raised under Criterion K. However, I find that the individual has not presented adequate mitigating factors that alleviate the legitimate security concerns under Criterion F. In view of the record before me, I find that the individual has not demonstrated that restoring his access authorization would not endanger the common defense and would be consistent with the national interest. Accordingly, I find that the individual's access

authorization should not be restored. The individual may seek review of this Decision by an Appeal Panel under the regulations set forth at 10 C.F.R. § 710.28.

Kimberly Jenkins-Chapman  
Hearing Officer  
Office of Hearings and Appeals

Date: March 23, 2007